UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,009	12/29/2000	Raja Daoud	10002669-1	6164

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EXAMINER
SALL, EL HADJI MALICK

ART UNIT	PAPER NUMBER
2157	

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>07 November 2005</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,9 and 14-18* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,9 and 14-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

RESPONSE TO APPEAL BRIEF

1.   This communication is in response to the appeal brief filed on November 7, 2005.

Applicant's arguments with respect to the rejection of claims 1-5, 9, 14-15 and 17-18

have been fully considered and are persuasive. Therefore, the rejection has been

withdrawn. However, upon further consideration, a new ground of rejection is made.

Claims 1-5, 9, 14-15 and 17-18 are pending. Claims 1-5, 9, 14-15 and 17-18 represent

apparatus and method for identifying a requested level of service for a transaction.

2.   *Claim Rejections - 35 USC § 102*

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent

by another filed in the United States before the invention thereof by the applicant for

patent, or on an international application by another who has fulfilled the requirements

of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof

by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act

of 1999 (AIPA) and the Intellectual Property and High Technology Technical

Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior

to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3.   Claims 1, 3, 4, 5 and 9 are rejected under 35 U.S.C. 102(e) as being

unpatentable over Bearden et al. U.S. 6,871,233.

Bearden teaches the invention as claimed including method and apparatus for

use in specifying and insuring service-level quality of service in computer networks (see

abstract).

As to claims 1 and 5, Bearden teaches an apparatus for identifying a requested

level of service for a transaction, comprising:

computer readable storage media (figure 3, item 301); and computer readable

program code stored in said storage media, comprising:

a) program code for prompting a user to select a requested level of service for

said transaction, said request level of service being based on a user identification

(column 1, lines 54-67; column 4, lines 20-25);

b) program code for assigning said requested level of service to said transaction

(column 2, line 3-7).

As to claim 3, Bearden teaches an apparatus, as in claim 1, further comprising:

a) program code for selecting a backup level of service (figure 4; column 5, line

45 to column 6, line 24, Bearden discloses if the QoS exceeds the selected QoS goal,

a set of actions is executed to reduce the network resources); and

b) program code for assigning said backup level of service to said transaction

(figure 4, item 402; column 6, lines 6-7).

As to claim 4, Bearden teaches an apparatus, as in claim 1, wherein said

requested level of service is a predefined service category (column 3, lines 43-47).

As to claim 9, Bearden teaches a method for requesting a level of service for a

transaction on a network, comprising:

selecting said requested level of service for said transaction via a user interface

(column 1, lines 54-67; column 4, lines 20-25);

assigning said requested level of service to said transaction (column 2, line 3-7).

4.   Claims 14, 15, 17 and 18 are rejected under 35 U.S.C. 102(e) as being

unpatentable over Davies et al. U.S. 6,483,805.

Davies teaches the invention as claimed including Internet differentiated services

service for transaction applications (see abstract).

As to claim 14, Davies teaches an apparatus for routing a transaction over a network based on a requested level of service associated with said transaction, comprising:

a number of computer readable storage media (column 7, line 55); and

computer readable program code stored in said number of storage media, comprising:

a) program code for selecting said requested level of service for said transaction (column 7, lines 47-59);

b) program code for assigning a service tag to said transaction, said service tag including said requested level of service, and said program code assigning parts of said service tag at more than one point on said network (column 6, line 66 to column 7, line 6; column 8, line 62 to column 9, line 4).

c) reading said requested level of service from said service; and d) directing said transaction over said network based on said requested level of service read from said service tag (column 7, lines 34-45).

As to claim 15, Davies teaches an apparatus, as in claim 14, wherein said transaction is directed over said network to a device best providing said requested level of service (column 7, lines 41-45, Davies discloses applying different treatments to different classes at different classes quality of service can be obtained for each class (i.e. every QoS request is forwarded to the proper destination or "device")).

As to claim 17, Davies teaches an apparatus, as in claim 14, wherein said

service tag is read by program code at more than one point on said network (column 7,

lines 35-9).

As to claim 18, Davies teaches an apparatus, as in claim 14, further comprising

program code for changing said requested level of service included on said service tag

(column 7, lines 19-34, Davies discloses excess of the agreed rate or offering inferior

service and mutating the marking rate to an alternate value).

5.   *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed

or described as set forth in section 102 of this title, if the differences between the

subject matter sought to be patented and the prior art are such that the subject

matter as a whole would have been obvious at the time the invention was made

to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negatived by the manner in which the invention was

made.

6.   Claim are rejected under 35 U.S.C. 103(a) as being unpatentable over Bearden

U.S. 6,871,233 in view of Davies U.S. 6,483,805.

Bearden teaches the invention substantially as claimed including method and apparatus for use in specifying and insuring service-level quality of service in computer networks (see abstract).

As to claim 2, Bearden teaches an apparatus, as in claim 1.

Bearden fails to teach said transaction is a packetized signal comprising at least a data packet, and wherein a service tag is associated with said data packet by said program code for assigning said requested level of service, said service tag including said requested level of service.

However, Davies teaches Internet differentiated services service for transaction applications. Davies teaches said transaction is a packetized signal comprising at least a data packet, and wherein a service tag is associated with said data packet by said program code for assigning said requested level of service, said service tag including said requested level of service (column 6, line 66 to column 7, line 3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Bearden in view of Davies to provide said transaction is a packetized signal comprising at least a data packet, and wherein a service tag is associated with said data packet by said program code for assigning said requested level of service, said service tag including said requested level of service. One would be motivated to do so to allow indicating the class of the traffic (column 7, line 6).

7.   *Conclusion*

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to El Hadji M Sall whose telephone number is 571-272-

4010. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

ABDULLAHI SALAD
PRIMARY EXAMINER

El Hadji Sall
Patent Examiner
Art Unit: 2157